

Judge Pechman

10-CR-00124-PLAGR

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JUN 10 2010

AT SEATTLE  
CLERK U.S. DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

SINISA GAVRIC,

Defendant.

NO. CR10-124MJP

PLEA AGREEMENT

The United States of America, by and through Jenny A. Durkan, United States Attorney for the Western District of Washington, and Lisca Borichewski, Assistant United States Attorney for said District, Defendant SINISA GAVRIC, and his attorney, Jennifer Horwitz, enter into the following Agreement, pursuant to Federal Rule of Criminal Procedure 11(c):

**1. The Charge.** Defendant, having been advised of his right to have this matter tried before a jury, agrees to waive that right and enter a plea of guilty to Count 1 of the Indictment, Conspiracy to Distribute Marijuana in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(D). The Indictment alleges a violation of 841(b)(1)(C), an offense involving at least 50 kilograms of marijuana, but the defendant is entering a guilty plea to the lesser included offense of 841(b)(1)(D), an offense involving less than 50 kilograms of marijuana. By entering this plea of guilty, Defendant hereby waives all objections to the form of the charging document, including any objection based upon the statute of limitations. Defendant further understands that

1 before entering his plea of guilty, Defendant will be placed under oath. Any statement given by  
2 Defendant under oath may be used by the United States in a prosecution for perjury or false  
3 statement.

4       **2. Elements of the Offense.** The elements of the offense of Conspiracy to Distribute  
5 Marijuana, as charged in Count 1, are as follows:

6           First, there was an agreement between two or more people to distribute marijuana; and,

7           Second, Defendant entered into the conspiracy knowing of its object, the distribution of  
8 marijuana, and intending to help accomplish it.

9       **3. The Penalties.** Defendant understands that the statutory penalties for the offense  
10 are a maximum term of five (5) years in prison, a fine of up to two hundred and fifty thousand  
11 dollars (\$250,000.00), a period of supervision following release from prison at least two (2) years  
12 and not more than three (3) years, and a \$100 special assessment. If Defendant receives a  
13 sentence of probation, the probationary period could be up to five (5) years. Defendant agrees  
14 that the special assessment shall be paid at or before the time of sentencing.

15       Defendant understands that in addition to any term of imprisonment and/or fine that is  
16 imposed, the Court may order Defendant to pay restitution to any victim of the offense, as  
17 required by law.

18       Defendant agrees that any monetary penalty the Court imposes, including the special  
19 assessment, fine, costs or restitution, is due and payable immediately, and further agrees to submit  
20 a completed Financial Statement of Debtor form as requested by the United States Attorney's  
21 Office.

22       Defendant understands that supervised release is a period of time following imprisonment  
23 during which he will be subject to certain restrictions and requirements. Defendant further  
24 understands that if supervised release is imposed and he violates one or more of its conditions, he  
25 could be returned to prison for all or part of the term of supervised release that was originally  
26 imposed. This could result in Defendant serving a total term of imprisonment greater than the  
27 statutory maximum stated above.

1 Defendant understands that by pleading guilty to a felony drug offense, he will become  
 2 ineligible for certain food stamp and social security benefits under Title 21, United States Code,  
 3 Section 862a.

4 **4. Rights Waived by Pleading Guilty.** Defendant understands that, by pleading  
 5 guilty, he knowingly and voluntarily waives the following rights:

- 6 a. The right to plead not guilty, and to persist in a plea of not guilty;
- 7 b. The right to a speedy and public trial before a jury of Defendant's peers;
- 8 c. The right to the effective assistance of counsel at trial, including, if Defendant  
 9 could not afford an attorney, the right to have the Court appoint one for Defendant;
- 10 d. The right to be presumed innocent until guilt has been established at trial, beyond a  
 11 reasonable doubt;
- 12 e. The right to confront and cross-examine witnesses against Defendant at trial;
- 13 f. The right to compel or subpoena witnesses to appear on Defendant's behalf at trial;
- 14 g. The right to testify or to remain silent at trial, at which trial such silence could not  
 15 be used against Defendant; and
- 16 h. The right to appeal a finding of guilt or any pretrial rulings.

17 **5. United States Sentencing Guidelines.** Defendant understands and  
 18 acknowledges that, at sentencing, the Court must consider the sentencing range calculated under  
 19 the United States Sentencing Guidelines, together with the other factors set forth in Title 18,  
 20 United States Code, Section 3553(a), including: (1) the nature and circumstances of the offense;  
 21 (2) the history and characteristics of the defendant; (3) the need for the sentence to reflect the  
 22 seriousness of the offense, to promote respect for the law, and to provide just punishment for the  
 23 offense; (4) the need for the sentence to afford adequate deterrence to criminal conduct; (5) the  
 24 need for the sentence to protect the public from further crimes of the defendant; (6) the need to  
 25 provide the defendant with educational and vocational training, medical care, or other correctional  
 26 treatment in the most effective manner; (7) the kinds of sentences available; (8) the need to  
 27 provide restitution to victims; and (9) the need to avoid unwarranted sentence disparity among  
 28

1 defendants involved in similar conduct who have similar records. Accordingly, Defendant  
2 understands and acknowledges that:

3 a. The Court will determine Defendant's applicable Sentencing Guidelines range at  
4 the time of sentencing.

5 b. After consideration of the Sentencing Guidelines and the other factors in 18 U.S.C.  
6 3553(a), the Court may impose any sentence authorized by law, up to the maximum term  
7 authorized by law.

8 c. The Court is not bound by any recommendation regarding the sentence to be  
9 imposed, or by any calculation or estimation of the Sentencing Guidelines range offered by the  
10 parties, or by the United States Probation Department.

11 d. Defendant may not withdraw a guilty plea solely because of the sentence imposed  
12 by the Court.

13 **6. Ultimate Sentence.** Defendant acknowledges that no one has promised or  
14 guaranteed what sentence the Court will impose.

15 **7. Immigration Consequences.** Defendant understands that, as a non-citizen of the  
16 United States, entering a guilty plea may have consequences regarding immigration status.  
17 Certain crimes are deportable offenses, and a plea of guilty to any such crime may subject  
18 Defendant to automatic deportation and removal from the United States. *See* 8 U.S.C.  
19 § 1227(a)(2). Defendant affirms that he has been advised of the potential immigration  
20 consequences that may result from the entry of the guilty plea contemplated by this agreement and  
21 is prepared to proceed with his guilty plea regardless of any immigration consequences that may  
22 result from this guilty plea, even if such consequences include automatic deportation and removal  
23 from the United States.

24 **8. Statement of Facts.** The parties agree on the following facts in support of  
25 Defendant's guilty plea and sentencing. Defendant admits he is guilty of the charged offense.

26 a. On April 26, 2010, ICE agents were conducting surveillance in the area of  
27 Mt. Baker and the Snoqualmie National Forest, near Glacier, Washington, where agents observed  
28 snowshoe tracks that crossed the international border. This is an area known to federal agents as

1 a route used by individuals smuggling contraband and illegal aliens between Canada and the  
2 United States.

3 b. While investigating the area of the snowshoe tracks, ICE agents and Border  
4 Patrol agents found four sets of snowshoes, and four backpacks containing a total of 49.28  
5 kilograms of marijuana. Agents also found defendant SINISA GAVRIC hiding in the woods.

6 c. Agents advised GAVRIC of his *Miranda* warnings, and GAVRIC waived  
7 his rights and agreed to answer questions. GAVRIC told agents that he and three other  
8 individuals hiked across the international border between Canada and the United States, each  
9 carrying a backpack containing marijuana. GAVRIC said that he thought he would be paid about  
10 \$10,000 for his efforts.

11 **9. Sentencing Factors.**

12 The parties agree and stipulate that the following Sentencing Guidelines provisions apply  
13 to this case:

14 a. A base offense level of 20 pursuant to USSG § 2D1.1(c)(10) for the offense  
15 involving at least 40 kilograms, but less than 60 kilograms of marijuana.

16 The parties agree they are free to argue the application of any other provisions of the  
17 United States Sentencing Guidelines. Defendant understands, however, that at the time of  
18 sentencing, the Court is free to reject these stipulated adjustments, and is further free to apply  
19 additional downward or upward adjustments in determining Defendant's Sentencing Guidelines  
20 range.

21 **10. Acceptance of Responsibility.** The United States acknowledges that if  
22 Defendant qualifies for an acceptance of responsibility adjustment pursuant to USSG  
23 § 3E1.1(a), and if the offense level is sixteen (16) or greater, his total offense level should be  
24 decreased by three (3) levels; pursuant to USSG §§ 3E1.1(a) and (b), because Defendant has  
25 assisted the United States by timely notifying the authorities of his intention to plead guilty,  
26 thereby permitting the United States to avoid preparing for trial and permitting the Court to  
27 allocate its resources efficiently.  
28

1       **11. Safety Valve.** Based on the evidence known to the United States at the time of  
 2 this Plea Agreement, the United States agrees Defendant is eligible for a sentencing adjustment  
 3 pursuant to the safety valve provisions of Title 18, United States Code, Section 3553(f)(1)-(5).  
 4 Those provisions require: (1) Defendant does not have more than 1 criminal history point; (2)  
 5 Defendant did not use violence or threats of violence or possess a firearm or other dangerous  
 6 weapon in connection with the offense; (3) the offense to which Defendant is pleading guilty did  
 7 not result in death or serious bodily injury; (4) Defendant was not an organizer, leader, manager  
 8 or supervisor in the offense as determined by the Sentencing Guidelines, nor was Defendant  
 9 engaged in a continuing criminal enterprise; and (5) not later than the time of sentencing,  
 10 Defendant has truthfully provided to the government all information and evidence Defendant has  
 11 concerning the offense to which Defendant is pleading guilty or concerning offenses that were  
 12 part of that common scheme or plan.

13       If at the time of sentencing, the United States continues to be satisfied Defendant has met  
 14 each of these five requirements, the United States will recommend a safety valve adjustment to  
 15 Defendant's sentencing range pursuant to Title 18, United States Code, Section 3553(f).  
 16 Defendant understands, however, that the Court will ultimately decide whether Defendant  
 17 qualifies for any sentencing adjustment, that comports with the safety valve provisions.

18       **12. Non-Prosecution of Additional Offenses.** As part of this Plea Agreement, the  
 19 United States Attorney's Office for the Western District of Washington agrees to dismiss Counts  
 20 2 and 3 of the Indictment, and not prosecute Defendant for any additional offenses known to it as  
 21 of the time of this Agreement that are based upon evidence in its possession at this time, or that  
 22 arise out of the conduct giving rise to this investigation. In this regard, Defendant recognizes that  
 23 the United States has agreed not to prosecute all of the criminal charges that the evidence  
 24 establishes were committed by Defendant solely because of the promises made by Defendant in  
 25 this Agreement. Defendant acknowledges and agrees, however, that for purposes of preparing the  
 26 Presentence Report, the United States Attorney's Office will provide the United States Probation  
 27 Office with evidence of all relevant conduct committed by Defendant.  
 28

1 Defendant agrees and acknowledges that any charges to be dismissed before or at the time  
2 of sentencing were substantially justified in light of the evidence available to the United States,  
3 were not vexatious, frivolous or taken in bad faith, and do not provide Defendant with a basis for  
4 any future claims under the "Hyde Amendment," Pub.L. No. 105-119(1997).

5 **13. Forfeiture of Contraband.** Defendant agrees that any illegal contraband and  
6 cellular telephones seized by any law enforcement agency from the possession of Defendant shall  
7 be forfeited for the official use and/or destruction by any law enforcement agency involved in the  
8 seizure of these items.

9 **14. Voluntariness of Plea.** Defendant acknowledges that he has entered into this  
10 Plea Agreement freely and voluntarily, and that no threats or promises, other than the promises  
11 contained in this Plea Agreement, were made to induce Defendant to enter this plea of guilty.

12 **15. Statute of Limitations.** In the event that this Agreement is not accepted by the  
13 Court for any reason, or Defendant has breached any of the terms of this Plea Agreement, the  
14 statute of limitations shall be deemed to have been tolled from the date of the Plea Agreement to:  
15 (1) 30 days following the date of non-acceptance of the Plea Agreement by the Court; or (2) 30  
16 days following the date on which a breach of the Plea Agreement by Defendant is discovered by  
17 the United States Attorney's Office.

18 **16. Post-Plea Conduct.** Defendant understands that the terms of this Plea Agreement  
19 apply only to conduct that occurred prior to the execution of this Agreement. If, after the date of  
20 this Agreement, Defendant should engage in illegal conduct, or conduct that is in violation of  
21 his/her conditions of release (examples of which include, but are not limited to: obstruction of  
22 justice, failure to appear for a court proceeding, criminal conduct while pending sentencing, and  
23 false statements to law enforcement agents, the Pretrial Services Officer, Probation Officer or  
24 Court), the United States is free under this Agreement to seek a sentence that takes such conduct  
25 into consideration. Such a sentence could include a sentencing enhancement under the United  
26 States Sentencing Guidelines or an upward departure from the applicable sentencing guidelines  
27 range.  
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1       **17. Waiver of Appeal.** As part of this Plea Agreement, and on the condition that the  
2 Court imposes a custodial sentence that is within or below the Sentencing Guidelines range  
3 consistent with the stipulations of the parties contained in this plea agreement, Defendant waives  
4 to the full extent of the law:

5           a. any right conferred by Title 18, United States Code, Section 3742 to appeal the  
6 sentence, including any restitution order imposed; and

7           b. any right to bring a collateral attack against the conviction and sentence, including  
8 any restitution order imposed, except as it may relate to the effectiveness of legal  
9 representation.

10       Furthermore, this waiver does not preclude Defendant from bringing an appropriate  
11 motion pursuant to 28 U.S.C. 2241, to address the conditions of his confinement or the decisions  
12 of the Bureau of Prisons regarding the execution of his sentence.

13       If Defendant breaches this Plea Agreement at any time by appealing or collaterally  
14 attacking the conviction or sentence in any way, the United States may prosecute Defendant for  
15 any counts, including those with mandatory minimum sentences, or penalty enhancements that  
16 were dismissed or not charged pursuant to this Plea Agreement.

17       **18. Completeness of Agreement.** The United States and Defendant acknowledge  
18 that these terms constitute the entire Plea Agreement between the parties.

19 This Agreement only binds the United States Attorney's Office for the Western District of

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1 Washington. It does not bind any other United States Attorney's Office or any other office or  
2 agency of the United States, or any state or local prosecutor.

3 Dated this 10<sup>th</sup> day of June, 2010.

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5 SINISA GAVRIC  
6 Defendant

7   
8 JENNIFER HORWITZ  
9 Attorney for Defendant

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11 DOUGLAS B. WHALLEY  
12 Assistant United States Attorney

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14 LISCA BORICHEWSKI  
15 Assistant United States Attorney  
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